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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

JURISDICTIONAL STATEMENT

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INDEX.

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement	3
A. The Statutory Scheme by Which Missouri Outlaws Strikes in Public Utilities	3
B. The Missouri Statute Is Applied to Outlaw a Strike by Employees and Representatives of Employees of Laclede Gas Company	4
C. Proceedings Below	8
The Question is Substantial	10
Conclusion	14
Appendix A	15
Appendix B	17
Appendix C	20
Appendix D	22
Appendix E	49
Appendix F	60

Authorities Cited.

Cases.

Amalgamated Ass'n of Street, etc. v. Wisconsin Employment Relations Board, 340 U. S. 383 ..... 10, 11, 12

Burrell v. Martin, 232 F. 2d 33 ..... 12, 13

Franks Bros. Company v. National Labor Relations Board, 321 U. S. 702 13

Harris v. Battle, 348 U. S. 803 13

Interstate Co. Comm'n v. Hoboken Mfgr's R. Co., 320 U. S. 368 12

Local 24, etc. v. Oliver, 358 U. S. 283 12

National Labor Relations Board v. Mexia Textile Mills, Inc., 339 U. S. 563 13

Oklahoma City v. Sanders, 94 F. 2d 323 (C. A. 10) 13

Rider v. Julian, 282 S. W. 2d 484 11

Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498 14

Southern Pacific Co. v. Interstate Comm. Comm., 219 U. S. 433 12

State ex rel. State Board of Mediation v. Pigg, 362 Mo. 798, 819, 244 S. W. 2d 75 11

United States v. Aluminum Company of America, 148 F. 2d 416 (C. A. 2) 14

United States v. Rock Royal Co-op., 307 U. S. 533 12

United States v. Trans-Missouri Freight Association, 166 U. S. 290 13

Walling v. Helmerick & Payne, Inc., 323 U. S. 37 13

Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579 ..... 11, 12

Statutes.

Code of Virginia, Chapter 17, Title 56, Acts of Assembly, 1952, Chapter 696, ¶ 56-509, 56-528 12
King-Thompson Act, Ch. 295, R. S. Mo., 1949 ..... 2, 49
Section 295.010 3
Section 295.020(1) 3
Section 295.180(1) 3
Section 295.180(2) 3, 4
Section 295.200(1) 3
Section 295.200(2) 4
Section 295.200(3) 4, 8
Section 295.200(4) 4, 8
Section 295.200(6) 4, 8
National Labor Relations Act, 61 Stat. 136, 29 U. S. C. ¶ 141, et seq. 2, 8, 60
United States Code, Title 28 ¶ 1257(2) 2

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Missouri, affirming as modified a final judgment of the Circuit Court, City of St. Louis, Missouri, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW.

The oral opinion of the Circuit Court, City of St. Louis (R. 261-262), Appendix A, pp. 15-16, *infra*, is not officially reported. Its decree (R. 263-265), and order amending decree (R. 285-286), are printed as Appendices B and C, respectively, pp. 17-19, 20-21, *infra*. The opinion of the Supreme Court of Missouri, as amended, Appendix D, pp. 22-48, *infra*, is reported at 317 S. W. 2d 309.

JURISDICTION.

The highest court of Missouri, rejecting contentions based on the Constitution of the United States, held valid the seizure-no-strike provisions of a Missouri statute popularly known as the King-Thompson Act. The opinion of the Supreme Court of Missouri was entered September 29, 1958, and its order modifying opinion and overruling appellants' petition for rehearing was entered November 10, 1958 (R. 438). Appellants' notice of appeal was filed in the Supreme Court of Missouri on January 23, 1959. Jurisdiction to review the decision by direct appeal is explicitly conferred on this Court by Title 28 United States Code § 1257(2).

QUESTION PRESENTED.

Whether Missouri may, consistently with the National Labor Relations Act, Article VI of the Constitution of the United States and the Fourteenth Amendment, apply to employees of a privately owned gas company which affects interstate commerce and to their collective bargaining representatives a statute which provides that in the event of a threatened or actual strike the State may "take possession" of the "public utility" and which makes it unlawful for employees of the Company after such "taking" to strike.

STATUTES INVOLVED.

Relevant provisions of the King-Thompson Act (Ch. 295 R. S. Mo., 1949) are summarized below and the entire Act is printed in Appendix E, *infra*, pp. 49-59. Relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U. S. C. § 141, *et seq.*), are printed in Appendix F, *infra*, pp. 60-62.

STATEMENT.

A. The Statutory Scheme by Which Missouri Outlaws Strikes in Public Utilities.

The King-Thompson Act declares (Section 295.010) that "heat, light, power, sanitation, transportation, communication, and water are life essentials of the people" and that "the possibility of labor strife" in industries supplying these services, defined as "public utilities" (Section 295.020(1)), "is a threat to the welfare and health of the people". The Act further declares that the "state's regulation of the labor relations affecting such public utilities is necessary in the public interest." (Section 295.010.)

Section 295.180(1) provides that if a strike, lockout or work stoppage occurs which, in the opinion of the Governor, "threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare", the Governor may "take immediate possession" of the utility. Section 295.180(2) provides that seizure may occur after investigation and proclamation by the Governor that "there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, * * * that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility * * *."

Section 295.200(1) provides that "after any plant, equipment or facility has been taken over by the state under this chapter" it "shall be unlawful for any person, employee or representative * * * to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state * * * as means of enforcing any demands against the utility or against the state." Violation entails the following consequences: A public utility

may not employ any person or employee who has participated in a strike after seizure except "as a new employee" (Section 295.200(2)); for each day after seizure that a labor organization or labor union allows a strike which it has called, incited or supported to continue, it "shall forfeit and pay to the state of Missouri * * * the sum of ten thousand dollars * * * to be recovered in civil action in the name of the state * * *" (Section 295.200(3)); every union officer who supports a strike after seizure forfeits and must pay to the State one thousand dollars (Section 295.200(4)). In addition, the courts of Missouri are empowered "to enforce by injunction or other legal or equitable remedies any provision of this chapter * * *." Section 295.200(6).

Section 295.180(2) provides that any public utility "taken" under the provisions of the Act "by reason of" a labor dispute "shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute".

B. The Missouri Statute Is Applied to Outlaw a Strike by Employees and Representatives of Employees of Laclede Gas Company.

Laclede Gas Company, a private corporation, hereinafter called the Company, is engaged in furnishing natural gas to industrial, commercial and domestic users in the St. Louis area (R. 30-31). Its operations affect interstate commerce within the meaning of the National Labor Relations Act (R. 400-401; 52-60).

Local 8-6, Local 8-109, and Local 8-194, Oil, Chemical and Atomic Workers International Union, hereinafter called the Locals, are labor unions which, under NLRB certifications, represent various units of Laclede's em-

ployees (R. 396; 61-62, 139, 143-144, 146-147).[1] Historically, contracts between the Locals and the Company predicate valuable employee benefits upon recognition of seniority in employment with the Company (R. 148-152, D. Exh. F, G and H). More than sixty (60) days prior to June 30, 1956, the expiration date of the then current collective bargaining contracts, the Locals notified Laclede of their desire to negotiate improved terms and conditions. In issue during negotiations were wages, vacations, making of riser connections and the like (R. 397; 145-147, 154-156, 79, 194-195, 196-197, 205-208). Pursuant to the provisions of the National Act, the Locals timely notified both the Federal Mediation and Conciliation Service and the Missouri State Board of Mediation of the existence of a labor dispute on these issues (R. 397; 195-198, 242). Negotiations continued through June 30, 1956 (R. 397; 208-209). When the old contract expired without agreement having been reached, the Locals went on strike (R. 397, 156-157, 209-210).

On July 3, 1956, Daniel C. Rogers, Chairman of the State Board of Mediation (R. 242), who, unlike officials of the Federal Mediation and Conciliation Service, had made no mediation or conciliation efforts in the dispute (R. 243, 245), met with officials of the Locals and urged them to call off the strike and return to work, stating that otherwise the Governor would be obliged to invoke the seizure law (R. 245-246).

On July 5, 1956, Governor Phil M. Donnelly issued a Proclamation and two Executive Orders (R. 397; 11-13-15, 29, 81) declaring that a labor dispute existed between Laclede and the Locals; that as a result Laclede's em-

[1] Local 8-6 represents the "physical" workers, Local 8-109 represents foremen, and Local 8-194 represents clerical workers (R. 396; 32). At all material times, each Local was in compliance with all relevant provisions of the Taft-Hartley Act (R. 137-138, 203-204).

ployees were on strike; that the strike threatened to interrupt Laclede's operations; that "the public interest, health and welfare are jeopardized as a result of the threatened interruption"; and that seizure under Section 295.180 was "necessary to insure" Laclede's "operation". By Executive Order No. 1, the Governor took "possession" of Laclede's facilities. By Executive Order No. 2 (R. 398; 81), the Governor appointed Daniel C. Rogers agent of the Governor to exercise the Governor's authority with respect to the seizure. The Order provided that all of Laclede's "rules and regulations * * * governing the internal management and organization of the Company and its duties and responsibilities shall remain in force and effect throughout the term of operation by the State of Missouri" (R. 398).

On the evening of July 5, 1956, Rogers, on behalf of the Governor, made a television broadcast concerning the effects of the seizure (R. 160, 169, 249). He stated that despite the seizure the striking employees were employees of the Laclede Gas Company, not of the State of Missouri (R. 170); that they will "report to work, when they wish to do so, to the Laclede Gas Company" (R. 171); that since they remain employees of Laclede the State of Missouri has no responsibility for their protection in the event of industrial injury or occupational disease and that only Laclede Gas Company is responsible therefor and for their coverage under the Unemployment Act and the Social Security Act (R. 171). He stated further that under seizure the employees were required to continue to render services to Laclede Gas Company; that "the obligation and responsibility falls upon the employees to stay at their jobs" to enable the Company "to render its public utility services to the people" (R. 172). He acknowledged that according to the Supreme Court of Missouri "seizure under the King-Thompson Act is token seizure" (R. 174); adding: "I don't

run the company or give the people any orders or anything of any kind. They are not working for me. I am merely the agent of the State here representing the Governor to observe and see to it that the property of the Laclede Gas Company is available for operation. The employees, of course, are supposed to operate the property under the directions of the Laclede Gas Company itself" (R. 174).[2] See also R. 80-84. Rogers further stated that "As of four o'clock today, Central Standard Time, five o'clock your time, the Proclamation and Executive Orders went into effect, and from that time on the employees are in violation of the law which provides that it shall be unlawful if, after seizure, they engage in a strike. So they are in violation of the law as of this time * * *. The employees, when the time arrives of a showing of resistance to the law, forfeit their seniority" (R. 174). He said that not only do the "employees forfeit their seniority rights" (R. 254), but that

2. At the hearing in this case, which began July 11 and ended July 13, 1956, Rogers testified that his seizure of the Laclede Gas properties consisted solely of delivering to the Company the Governor's proclamation and Executive Orders; that he "never was in the Laclede offices except that one time, and haven't been back since"; "that the State of Missouri is not * * * operating the Laclede Gas Company"; that Laclede, not the State of Missouri collects the receipts from the operations; that natural gas is purchased by Laclede Gas Company, not by the State; that neither he nor anyone else on behalf of the State or the Governor of the State was signing vouchers, disbursement slips, checks, or any other evidence of debt, or authorization for payment of debt (R. 255); that he did not have a Social Security number and did not intend to apply for one as an employer of employees of Laclede Gas Company (R. 256); that he has not put up any signs, notices, or anything else on the name plate or other Company identifications of its properties (R. 256); that none of the properties of Laclede Gas Company have been conveyed, transferred or turned over to him in any way (R. 256); that the Chairman of the Board and the President were fulfilling and discharging their functions in those offices for the Company; that they had not furnished any accounting or reports to the agent of the Governor and were not expected to account, and that the Superintendent of Production of the Company continued also to discharge the duties of the position without reporting or accounting to him (R. 256-257).

"the Union was subject to a fine of ten thousand dollars a day and * * * the officers are subject to one total fine of one thousand dollars each" (R. 254).

On July 7, 1956, the State of Missouri filed suit against the Locals, appellants herein, pursuant to Section 295.200 (3) of the King-Thompson Act, to collect the forfeitures provided therein for their failure to terminate the strike following the seizure[3] (R. 307-394). As noted by the court below (R. 399-400), this suit is still pending.

C. Proceedings Below.

On July 9, 1956, the State of Missouri, pursuant to Section 295.200(6), filed suit in the Circuit Court, City of St. Louis, to enjoin appellants from continuing the strike (R. 399; 2-11). Appellants filed a motion to dismiss and a petition for declaratory judgment alleging, *inter alia*, that the King-Thompson Act, as applied to employees of Laclede and their bargaining agents, is in conflict with the National Labor Relations Act, Section 8 of Article I, Article VI and the Fourteenth Amendment of the Constitution of the United States (R. 399; 15-27, 28, 258-260). In support of their petition appellants alleged that the constitutionality of the statute under which the Governor had acted was in serious doubt; that the Governor threatened to enforce the monetary forfeiture and loss of seniority provisions of the statute against appellants and members of appellant unions because of their refusal to terminate the strike after the seizure, and that in view of the great and irreparable injury to which appellants were subjected it was appropriate and necessary

3. The State of Missouri also filed suit against the individual officers of appellant unions under Section 295.200(4), to collect the sums forfeited by them as a result of their failure to call for termination of the strike after seizure. This action, like No. 46,664, is still pending in the Missouri courts.

to resolve the constitutional question by declaratory judgment (R. 259; 26-27). Appellants further alleged that the controversy over constitutionality will continue as long as the Governor deems himself free to apply the seizure-no-strike provisions to Laclede and to other companies whose activities affect interstate commerce; that the Governor's threat to enforce the Act in future labor disputes deprives defendants and their members and all employees and their bargaining agents similarly situated of their rights under the National Labor Relations Act and the Constitution of the United States and that it interferes with the system of free collective bargaining which Congress determined should govern labor relations in these industries (R. 26-27).

The trial court specifically found that the defendants "incited, supported and participated in * * * a work stoppage and strike against the Laclede Gas Company * * * subsequent to" the seizure (R. 264, 398; 8-9, 21, 183, 263). It found that this conduct was "unlawful" (*ibid.*). The court issued a declaratory judgment holding the Act constitutional and granted an injunction as prayed (R. 263-265, 285-286). On July 14, 1956, the day after the injunction issued, the strike was terminated (R. 399).

On appeal, the Supreme Court of Missouri affirmed, holding that the seizure-anti-strike provisions of the statute, as applied to labor disputes involving employers subject to the National Act, are constitutional (R. 421). It rejected the contention that because Laclede and the Locals had signed new contracts on August 10, 1956, and the Governor had terminated the seizure on October 31, 1956, the case for determination of constitutionality was moot (R. 399-400).

THE QUESTION IS SUBSTANTIAL.

1. In upholding the seizure-anti-strike provisions of the King-Thompson Act, the Supreme Court of Missouri followed the dissent, rather than the holding and opinion of the majority of the Supreme Court of the United States in *Amalgamated Ass'n of Street, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383. In Amalgamated this Court held that Congress deliberately preempted the field of economic strikes in public utilities whose operations affect interstate commerce; that Congress safeguarded against state infringement the right of employees of such utilities to strike, that neither federal occupation of the field nor federal protection of the right to strike may be subverted by the states on the theory that strikes in public utilities create "local emergencies".

On the premises of the *Amalgamated* decision the differences between the Missouri and Wisconsin statutes relied upon by Missouri (R. 173-174) are immaterial. Like Wisconsin, Missouri nullifies the federally protected right to strike. That nullification makes impossible resolution of the issues in dispute through free collective bargaining—the method relied on by Congress. True, Missouri, unlike Wisconsin, does not attempt to substitute for collective bargaining compulsory arbitration. But that sharpens rather than mitigates the conflict. Under compulsory arbitration, the issues are resolved at least by neutrals, not unilaterally by one of the contestants. Under the Missouri system, however, seizure imposes the pressure on the employer to yield to the employees' demands while it leaves the employees no choice but to work on the employer's terms. Thus, Missouri vests in the employer absolute power to decide and to fix terms and conditions of employment. If Wisconsin's substitute for collective bargaining is in conflict with federal policy, *a fortiori*

Bori, Missouri's must fall. Indeed, Congress squarely recognized that seizure, like compulsory arbitration, is antithetical to collective bargaining. It rejected both on the merits and not "because of any desire to leave the states free to adopt it". *Amalgamated* case, 340 U. S. 383, 395; and note 21; *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586.

Nor is it material that in Missouri a strike is outlawed only after executive determination that disruption of operations is threatened. Disruption of operations is a normal consequence of strike action. The question is not, as the Missouri Supreme Court conceived it, whether the consequences of interruption of a public utility service are such that exercise of state police power may be deemed reasonable. The question is rather whether Congress, by preserving the right of employees of public utilities to strike, and by refusing to exempt public utilities from the industries in which economic strikes are governed exclusively by federal law, precluded intervention of state power. This Court answered that question in *Amalgamated* when it rejected the contention "that Congress intended, by silence, to leave the states free to regulate 'local emergency' disputes." 340 U. S. 383, 393-394.

It is not claimed, and in the light of the Missouri Supreme Court's construction of the King-Thompson Act in *Rider* v. *Julian*, 282 S. W. 2d 484, 492-496, and the official position of the State in *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 819, 244 S. W. 2d 75, 84, and in this case (R. 251-253, pp. 6-7, *supra*), it could not be claimed, that seizure has the effect of transforming a utility's employees into employees of the State or making the State their employer. Thus, under this law, seizure

does not even arguably alter the preemptive applicability of the national Act.[4]

2. The Missouri Supreme Court correctly held that the case for declaratory judgment, ripe for adjudication when the trial court ruled (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 586), was not rendered moot by termination of the strike pursuant to the injunction, subsequent execution of contracts between Laclede and the defendants and consequent relinquishment of the seizure (R. 399, 400). As the trial court specifically found (R. 264), appellant Locals continued their strike after the seizure began from July 5, through July 14, 1956, in defiance of the Missouri Act's outlawry of such conduct. The Locals and their officers thereby subjected themselves to the substantial forfeitures which Missouri is now seeking to enforce (p. 8, *supra*). The employees jeopardized their seniority rights, which remain in doubt. Since liability for substantial penalties and potential loss of seniority turn upon the constitutionality of the seizure-no-strike provisions, it cannot be suggested that the case for determining constitutionality is moot. *So. Pacific Co. v. Interstate Comm. Comm.*, 219 U. S. 433, 452; *United States v. Rock Royal Co-op.*, 307 U. S. 533, 555-556; *Interstate Com. Comm'n. v. Hoboken Mfgr's R. Co.*, 320 U. S. 368, 376-377; *Amalgamated Assn., etc. v. Wisconsin Employment Relations Board*, 340 U. S. 416, 417, note 1; *Burrell v.*

4. Cf. Chapter 17, Title 56, Code of Virginia, Chapter 696, Acts of Assembly 1952, §§ 56-509—56-528. Accordingly, there is no occasion here to consider the effect of a contention that a state may, without offending the National Act, through exercise of its power of eminent domain, become the actual owner and operator of a utility, and hence an "employer" exempt by virtue of Sections 2(2) and 2(3) of the National Act from its limitations. Cf., however, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 586 and *Local 24, etc. v. Oliver*, 358 U. S. 283.

Martin, 232 F. 2d 33, 37-39, and note 16 (C. A. D. C.); *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 325 (C. A. 10).[5]

Execution of contracts after employees and their bargaining agents have been prohibited from continuing their strike would not, in any event, render moot the controversy concerning the constitutionality of the statute which authorized the prohibition. Settlement of a labor dispute after the right to strike has been denied is not the product of free collective bargaining; it is the fruit of the state's illegal interference with it. Cf. *Franks Bros. Company* v. *National Labor Relations Board*, 321 U. S. 702, 704-705. Discontinuance of an illegal restraint after success has made its perpetuation unnecessary, "does not operate to remove a case from the ambit of judicial power." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 308-309. Missouri may not escape review by this Court of the constitutionality of its intrusion into the pre-empted field by making execution of a contract after seizure the occasion for lifting its strike ban. To hold otherwise would allow Missouri to play hide-and-seek with federal supremacy. Cf. *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, 568.

5. *Harris* v. *Battle*, 348 U. S. 803, upon which the suggestion of mootness below was predicated, is wholly inapposite. There, no potential liability of any kind had been incurred prior to termination of the seizure. Under the Virginia law seizure has characteristics and consequences entirely different from those here involved. Thus, under the Virginia law the State undertakes to operate the utility *qua* employer for its own account. Ch. 17, §§ 56-512, 56-518, 56-520, 56-522. The utility's employees are under no obligation to apply for or accept employment by the State and their seniority rights with the utility are unaffected by their refusal to work during seizure. §§ 56-513—56-514. Neither the Union nor its officers are required to call off a strike after seizure. The only restraint imposed is that after seizure a union may not picket or otherwise attempt to prevent the State from obtaining employees or operating the utility. § 56-517. In the *Harris* case there was no claim or finding that appellants had in any way violated the statute.

In view of the pervasive threat to invoke seizure in future disputes, termination of the dispute which invoked this seizure could not moot the controversy. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 514-516; *United States* v. *Aluminum Company of America*, 148 F. 2d 416, 448 (C. A. 2). That threat itself impairs the guarantees of the federal Act in all industries which the Missouri Act encompasses. In these industries the employees and their bargaining agents, contrary to the intention of Congress, cannot formulate and press their collective bargaining demands in the expectation that ultimate resolution will depend upon the outcome of a conflict of economic forces (Cf. R. 177). As to them, the effectiveness of strike action measures the imminence of seizure, not collective bargaining success. While that situation continues the constitutionality of the Missouri scheme for outlawing public utility strikes remains ripe for adjudication.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Court should reverse the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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APPENDIX A.

ORAL OPINION OF THE CIRCUIT COURT, CITY OF ST. LOUIS, JULY 13, 1956. (R. 261-262.)

I would not say that the legal question involved in this case is a simple one. I think it is a narrow one. The question, as I see it, is whether these provisions—the seizure provisions—of the King-Thompson Act are constitutional or not; and I think that is the only question to be decided by me in this proceeding. The only cases I know of that bear directly on this Act are the *Julian* case and the *Pigg* case. In the *Pigg* case the court expressly stated that it was not passing on the constitutionality of the sections which are involved here. The other case—the *Julian* case as I call it—has nothing to do particularly with these sections, and the court stated the constitutional question was not properly raised. That means, then, that I face this question with no direct authority in this state, I grant that the *Amalgamated* case, which has been referred to, throws doubt on the constitutionality of this Act. However, as I read the case, and as I read the Wisconsin statute, there are material differences in the Wisconsin Act and this Act.

I think it is a firmly established principle in this state that a trial court should not declare an act of the General Assembly unconstitutional without it being clearly so. This act was passed by the General Assembly, the representatives of the people of this state, after debate and careful consideration, and it is the law of this state. I consider the *Amalgamated* case in this connection indirect authority, and not, in my mind, sufficiently direct on the act

involved here to declare it unconstitutional; and, for that reason, I will not do so. Close constitutional questions in general are, of course, to be determined by the upper courts. And, again, I say, unless it is clear to a trial judge that an act is unconstitutional he should not declare it so. I do not feel this is clearly so. Therefore, I am of the opinion that I should rule the act constitutional, and the injunction should issue. You may prepare a draft for my signature.

Your petition for a declaratory judgment of unconstitutionality will be denied.

APPENDIX B.

DECREE.
(R. 263-265.)

On July 14, 1956, the Court duly made and entered of record the following judgment, order and decree, which appears in Record Book 837 at page 235:

DECREE.

This cause having been heard heretofore, to-wit, on July 11, 12 and 13, 1956, on plaintiff's application for a temporary injunction and on the Order to Show Cause, heretofore issued by the Court on July 9, 1956, and it having been stipulated by and between the plaintiff and the defendants that the issues on plaintiff's petition for a permanent injunction should be submitted to the Court for a decision on the pleadings and on the evidence submitted to the Court on July 11, 12 and 13, 1956, and the whole matter having been duly heard and the cause submitted to the Court, and the Court being now fully advised in the matter does find the issues in favor of the plaintiff and against the defendants, and

Whereas, it appearing to the Court that the Governor of the State of Missouri, pursuant to the authority vested in him by Chapter 295, R. S. Mo. 1949, and particularly Section 295.180, R. S. Mo. 1949, took possession of the plants, equipment and all facilities of the Laclede Gas Company, a public utility, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 4:00 o'clock P. M., Central Standard Time, July 5, 1956, and

Whereas, it appearing to the Court that the defendant Unions, the defendant Officers of said Unions, and the defendant Employees of the Laclede Gas Company, including the defendants individually named, have incited, supported and participated in, as a joint and common cause, a work stoppage and strike against the Laclede Gas Company and in a refusal to work by said defendant employees for and on behalf of the State of Missouri in distributing, selling and furnishing gas to the customers of Laclede Gas Company through the plants, equipment and facilities of the Laclede Gas Company, all subsequent to the action of the Governor of the State of Missouri, in taking possession of the plants, facilities and equipment of the Laclede Gas Company, aforesaid, and

Whereas, it appearing to the Court that the action of the defendant Unions, defendant Officers and defendant employees in inciting, supporting and participating in said strike and concerted refusal to work for the Laclede Gas Company and the State of Missouri after said plants, equipment and facilities of the Laclede Gas Company had been taken over by the State of Missouri, as aforesaid, is unlawful, and

Whereas, it appearing to the Court that the defendant Unions, defendant Officers and defendant employees will continue to incite, support and participate in said strike and concerted refusal to work for the Laclede Gas Company and the State of Missouri, aforesaid, unless said defendants are restrained and enjoined by this Court, and

It appearing to the Court that the plaintiff is without adequate remedy at law in the premises:

It Is Ordered, Adjudged and Decreed that said defendants and all other persons to whom notice of this order of injunction may come, be and they are hereby permanently enjoined and restrained from continuing, inciting, supporting and participating in the work stoppage, refusal to work

and strike aforesaid against the Laclede Gas Company or the State of Missouri.

It Is Ordered, Adjudged and Decreed that defendants' petition for a declaratory judgment be denied.

The costs of this proceeding are adjudged against the defendants.

Done at the City of St. Louis, Missouri, July 14, 1956.

IVAN LEE HOLT, JR.,
Judge of the Circuit Court for the City of St. Louis, State of Missouri.

APPENDIX C.

ORDER OF COURT.
(R. 285-286.)

Plaintiff's motion to amend decr[illegible] denied as to Specification I and granted as to Specific[illegible]on II as hereinafter set out. Decree of July 14, 1956, amended by striking therefrom in the fourth and third lines from the bottom of the second page, "It is ordered, adjudged and decreed that defendants' petition for a declaratory judgment be denied," and inserting in lieu thereof the following:

"It is ordered, adjudged, and decreed on defendants' petition for a declaratory judgment that Chapter 295, R. S. Mo., 1949, and all portions thereof are valid, enforceable, constitutional, and not in violation or derogation of the Constitution of the United States or of the Constitution of the State of Missouri; that the acts performed by Phil M. Donnelly, Governor of the State of Missouri, pursuant to and under the said Chapter 295, R. S. Mo., 1949, are valid and enforceable; that it is unlawful under said Chapter 295, R. S. Mo., 1949, for the defendants to incite, support or participate in any strike or concerted refusal to work for the Laclede Gas Company or the State of Missouri as a means of enforcing any demands against the Laclede Gas Company or the State of Missouri so long as the proclamation and executive orders issued on July 3, 1956, by Phil M. Donnelly, Governor of the State of Missouri, pursuant to the authority conferred upon him by Section 295.180, R. S. Mo., 1949, seizing the plants, equipment, and facilities of the Laclede Gas Company for the use and operation by the State of Missouri in the public interest shall remain in force and effect."

Defendants' motion to set aside decree of injunction, exceptions to decree of injunction, motion for declaratory judgment and motion for a new trial, all denied.

Done at the City of St. Louis, Missouri, August 17th, 1956.

IVAN LEE HOLT, JR.,
Circuit Judge.

APPENDIX D.

IN THE SUPREME COURT OF MISSOURI
En Banc.

No. 45,869.

In Office of Clerk of Supreme Court, September 29, 1958.

STATE OF MISSOURI, *Respondent,* *vs.* LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., *Appellants.*	Appeal from the Circuit Court of the City of St. Louis. Honorable Ivan Lee Holt, Jr., Judge.

The defendants have appealed from a judgment of the Circuit Court of the City of St. Louis enjoining them from continuing and participating in a work stoppage and strike against the Laclede Gas Company or the State of Missouri, the plaintiff in the action. The judgment also declared the Act upon which the action is based, Ch. 295, R. S. Mo. 1949, commonly known as the King-Thompson Act, to be valid and constitutional. The defendants are officers and members of Local Unions Nos. 8-6, 8-109 and 8-194 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO. Laclede Gas Company, a Missouri corporation, is an operating gas utility engaged in the distribution and sale of gas in the metropolitan area comprising the City of St. Louis and St. Louis County.

On July 1, 1956, Laclede had approximately 2,500 em-

ployees. Approximately 1,700 production and distribution workers were represented by Local 8-6. About 100 foremen were represented by Local 8-109, and about 400 clerical workers by Local 8-194. At all times herein mentioned, these unions were duly certified by the National Labor Relations Board as representatives of such employees for the purpose of collective bargaining.

The expiration date of the labor agreements between Laclede and its employees was June 30, 1956, at midnight. More than sixty days before the expiration date, the employees, through their representatives, notified the company of their desire to modify the agreements. Notice of the labor dispute also was given to the Federal Mediation and Conciliation Service and to the Missouri State Board of Mediation. The labor dispute involved wages, vacations, making of riser connections and other matters. Negotiations for new labor agreements were initiated between the three local unions and Laclede and were continued through June 30, 1956. When the old contract expired without a new one being consummated, approximately 1,800 employees, represented by these three unions, went on strike pursuant to a strike vote previously taken. The strike began July 1, 1956 and picket lines were set up at all offices and locations of the company, about 10 in number. About 300 supervisory employees who were not members of these unions remained on duty and undertook to continue furnishing gas to the customers, but service could not be maintained for reasons hereinafter more fully discussed.

On the afternoon of July 5, 1956, the Honorable Phil M. Donnelly, governor of the State of Missouri, issued a Proclamation and two Executive Orders which were served upon the defendants and the managing officers of Laclede. This Proclamation and the Orders were designed to effect the seizure of the utility and continue its operation in the public interest by virtue of the authority vested in the

governor by the Constitution and the laws of Missouri, particularly § 295.180 of the King-Thompson Act. The Proclamation declared, after investigation, it was the governor's opinion that "the public interest, health and welfare are jeopardized" because of the interruption of the operation of the utility as a result of the labor dispute and strike and, further, that the exercise of the authority vested in the governor by § 295.180 was necessary to insure the continued operation in Missouri of the public utility.

Executive Order No. 1 stated that the governor took possession of "the plants, equipment, and all facilities of the Laclede Gas Company, located in the State of Missouri, for the use and operation by the State of Missouri in the public interest," effective as of 4 o'clock p. m., July 5, 1956.

The governor's Executive Order No. 2 provided:

"(1) That Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as my agent, is hereby authorized and directed to take possession of the plants, equipment and all facilities of the Laclede Gas Company in the State of Missouri or such parts of each of said plants, equipment and facilities as may be necessary for the purpose of carrying out the provisions of this Order, and to effect my Proclamation and Executive Order No. 1 declaring the public interest, health and welfare jeopardized, in order to insure that the said utility above mentioned is effectively operated in the interest of the people of this State to the end that they may have the benefit of necessary and essential public utility services.

"(2) Said Daniel C. Rogers shall exercise the aforesaid authority as my agent forthwith, and he shall continue to exercise the aforesaid authority as my agent until and unless otherwise directed by me.

"(3) All rules and regulations of the aforesaid utility governing the internal management and organization of the

company, and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri."

The employees on strike did not return to work when the governor's Proclamation and Executive Orders were issued and served upon their representatives. On July 9, 1956, the State of Missouri in its sovereign right, filed suit seeking to restrain and enjoin the defendants from continuing the strike, basing its action upon Chapter 295 of the Revised Statutes of Missouri, and, particularly § 295.180 and § 295.200 and the governor's Proclamation and Executive Orders issued pursuant thereto. The defendants' pleadings, *inter alia*, attacked the constitutionality of the King-Thompson Act and the validity of the Proclamation and Executive Orders of the governor and of his agent acting thereunder and also sought a declaratory judgment that Chapter 295 was unconstitutional.

Trial of the case began on July 11, 1956, and concluded on July 13, 1956. The Court adjudged and decreed that the injunction be issued as prayed and held Chapter 295 was not unconstitutional and that the Proclamation and Executive Orders issued by the governor, pursuant to the authority conferred upon him by Section 295.180, were valid and enforcible. On July 14, 1956, the day after judgment was rendered, the striking employees returned to work.

Amici curiae urge us to dismiss the appeal on the ground the case is now moot. Going outside the record as permitted for this purpose, *State ex rel. Donnell v. Searcy*, 347 Mo. 1052, 152 S. W. 2d 8, 10(2), they assert that Laclede and its employees signed a labor agreement on August 10, 1956, and that the governor terminated his seizure of the utility on October 31, 1956, which was, however, after this appeal was taken. They contend that the injunction having expired by its own terms the appeal should be dismissed in accordance with our practice of refusing to pass on moot

questions. Neither the plaintiff nor the defendants join in this request.

Among other cases, the *amici curiae* cite *Pressler v. Doherty*, 364 Mo. 596, 265 S. W. 2d 404, 407 (4), which holds: "A question is moot when the question presented for decision seeks a judgment upon some matter which if judgment were rendered could not have any practical effect upon any then existing controversy." One factor to be considered is that seizures of utilities in similar situations are likely to occur again and it is in the public interest that the question of their validity be determined. Moreover, we know from our own records, No. 46,664, *State of Missouri v. Local No. 8-6 et al.*, that another action, growing out of the same transaction, is pending in the trial court against these defendant unions to assess monetary penalties pursuant to Section 295.200(3).

Where the matters connected with or growing out of the original cause have not been fully and finally disposed of and the questions presented are of public importance and likely to recur in the courts of the state, an appeal need not be dismissed as being moot although the immediate controversy has ceased to exist. *State ex rel. Atchison, T. & S. F. Ry. Co. v. Trimble*, 254 Mo. 542, 163 S. W. 860, 862(1). See also *Stegmann v. Weeks*, 279 Mo. 131, 214 S. W. 134, 135(2); *Morrison v. Hess*, Mo., 231 S. W. 997, 999(1); *Missouri Electric Power Co. v. Smith*, 348 Mo. 738, 155 S. W. 2d 113, 117(1); *State ex rel. Chubb v. Sartorius*, 351 Mo. 1227, 175 S. W. 2d 783, 785(1); *Morrison v. State*, Mo. App., 252 S. W. 2d 97, 100(2). This seems to be consistent with the practice in federal courts. *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37, 43, 65 S. Ct. 11, 89 L. Ed. 29; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, 514-516, 31 S. Ct. 279, 55 L. Ed. 310. We believe a justiciable controversy is presented in the circumstances of

this case. We reject the suggestion that the appeal should be dismissed as moot.

Ninety-nine per cent of the product distributed by Laclede was natural gas, all of which came from Louisiana or Texas. Natural gas was taken from pipe lines and put directly into the distribution system or in storage. In addition to other methods, Laclede maintains an underground storage reservoir in St. Louis County capable of accommodating in excess of two billion feet of gas. Large quantities of pipe fittings, meters and other supplies and products were also purchased by Laclede from outside the State of Missouri. For the year ending December 31, 1955, Laclede's gross revenue was in excess of $41,000,000. The defendants contend, and properly so, that Laclede Gas Company was engaged in interstate commerce and that its labor activities are subject to the Labor Management Relations Act, 1947. *Amalgamated Association* v. *Wisconsin Board*, 340 U. S. 383, 391, 71 S. Ct. 359, 95 L. Ed. 364; *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244 S. W. 2d 75, 80(8).

The defendants' first attack upon the constitutionality of the King-Thompson Act, Ch. 295 R. S. Mo. 1949, is that it contravenes Art. 1, Section 8, and Art. VI of the Constitution of the United States in that it conflicts with the National Labor Relations Act of 1935, as amended by the Labor Management Relations Act of 1947. The national labor relations laws were enacted pursuant to Section 8, Clause 3 of Art. I, which empowers Congress to regulate commerce among the several states. Art. VI, Clause 2, declares the Constitution and the laws of the United States made pursuant thereto to be the supreme Law of the Land.

The constitutionality of the King-Thompson Act was under attack on the same ground in the case of *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244

S. W. 2d 75. In the *Pigg* case, this court held the Act was severable, particularly those sections directly affecting the State Board of Mediation, its legal existence, powers and duties. 244 S. W. 2d 79(7). The first eight sections of the King-Thompson Act, Secs. 295.010-295.080, R. S. Mo. 1949, declaring state policy, defining terms, creating the Board and defining its duties, powers and mediation services, were held not to be in conflict with the Labor Management Relations Act, 1947, particularly in view of Secs. 203(c) and 203(b), 29 U. S. C. A. Secs. 172(c) and 173(b), which contemplate the existence of State Boards and cooperation with them. 244 S. W. 2d 80 (8, 9). Sections of the King-Thompson Act providing for public hearing panels, being Secs. 295.120-295.170, were held in the *Pigg* case not to require compulsory arbitration and not to be in conflict with the Labor Management Relations Act since both the federal and state acts "rely upon the force of public opinion to induce the parties to arrive at a voluntary agreement." 244 S. W. 2d 82(10). To the extent that those sections are a necessary predicate for the additional sections not reached for decision in the *Pigg* case, but with which we are now concerned, we reaffirm our previous holding that those sections are not unconstitutional as being in conflict with the federal Act.

The facts relied upon to rebut the presumption of constitutionality of the Act must specifically appear in the record. *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176, 185, 56 S. Ct. 159, 80 L. Ed. 138, 101 A. L. R. 853; *State ex rel. Kenosha Auto Transport Corporation* v. *Flanigan*, 349 Mo. 54, 159 S. W. 2d 598, 599 (2, 3). Judicial review will not be accorded constitutional questions which are not directly and necessarily involved in the particular legal situation presented on appeal. *Juengel* v. *City of Glendale*, Mo., 161 S. W. 2d 408, 409(2);

Kansas City, Mo. v. *Williams*, 205 F. 2d 47, 51(3), certiorari denied 346 U. S. 826, 74 S. Ct. 45, 98 L. Ed. 351.[1]

The essential facts in this case are that the governor, after investigation, proclaimed that the public interest, health and welfare were jeopardized as a result of the interruption of gas service caused by a strike of Laclede employees; executive orders were issued, the property of the utility was seized; and, when the employees failed to return to work, the state sought and obtained an injunction. The parts of the Act directly involved are Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 295.200 R. S. Mo. making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means. Under established principles, we will restrict our consideration to those sections directly involved.

The dominant purpose of the King-Thompson Act is the protection of the welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state.[2] Its provisions

1. The wisdom of our not passing on such questions until they are squarely before us is well stated in *West* v. *Spencer*, 238 Mo. 65, 141 S. W. 586, 588(2), as follows: "This rule has a tendency to exclude obiter; it points the distinction between a legal treatise on a general head of the law and a judicial opinion on a concrete case, and it saves trouble to those judges who come after us and are called to decide the question as vital and turning in some appeal."

2. Section 295.010, declaring the state policy is as follows: "It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest (L. 1947 V. I p. 358, § 1)."

are directed against both the utility and its employees for the purpose of protecting the patrons and the public generally. While it makes mediation services and public hearing panels available, it does not force these services upon the parties. This is consistent with the policy of the Labor Management Relations Act, 1947. The Act does not purport to be a complete set of labor relation laws.

Section 295.180 authorizes the governor to take possession of the utility property for the use and operation by the state of Missouri only when the parties to the labor dispute "engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in failure to continue the operation of the public utility, and threatens the public interest, health and welfare."

The State of Missouri has regulated the relations between public utilities and their patrons as far back as 1913 when the Public Service Commission was established. See Laws of Missouri 1913, p. 602, now Ch. 386, R. S. Mo. 1949. The Public Service Commission Law disclaims any intent to interfere with interstate commerce, "except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress." Laws of Missouri 1913, p. 651, Sec. 138; Sec. 386.030 R. S. Mo. 1949.

The right of a state to regulate and control public utilities operating within its borders is inherent and is referable to the police powers. Statutes with respect thereto being remedial should be liberally construed. *State ex rel. Laundry, Inc. v. Public Service Commission of Missouri*, 327 Mo. 93, 34 S. W. 2d 37, 42(2); *Atlantic Coast Line R. Co. v. North Carolina Corp. Comm.*, 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933; *Louisville etc. R. Co. v. Tennessee R. Comm.*, 19 F. 679; 73 C. J. S. 1006, Public Utilities § 11; 43 Am. Jur. 577, Public Utilities and Service § 10. Section 386.610 of our statutes provides that the Public Service

Commission Law "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice *between patrons and public utilities.*" (Emphasis supplied.)

Chapter 386 of the statutes deals generally with the public service commission, its powers and duties and procedure before it. Chapter 393 deals specifically with gas, electric, water and heating corporations. Sec. 393.130 provides that every such utility, including a gas company, is required by law to furnish and provide "such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Laws of Missouri 1913, p. 602.

It is quite clear that the "patrons" of Laclede Gas Company were not furnished with "safe and adequate" service after the strike began. The strike had been in progress for five days before the governor exercised his emergency powers and it was four days later before the state filed suit. The evidence demonstrates conclusively that the public health, safety and interest was jeopardized and that the governor had reasonable cause to take action.

The evidence showed that Laclede had approximately 364,000 customers, including domestic, industrial and commercial users. It was the only utility distributing gas in the area. Residential customers used gas for cooking, water heating, refrigeration and space heating. Practically all of the hospitals in the St. Louis area used gas for sterilization, hot water heating, cooking and space heating. Doctors and dentists in the area were also furnished with gas for their office purposes. Large housing projects were also among the company's customers.

During the first ten days of the strike, Laclede received in excess of 13,000 service calls concerned principally with complaints that the gas service had failed or that leaks existed in the streets. Records of typical cases involving

danger to health and safety were put in evidence by the state. The normal number of complaints concerning failure of gas service for such a period was about 100. There was testimony that "practically all the areas in our county system" had been denied gas service due apparently to the closing of shut-off valves by unauthorized persons. Areas within the city of St. Louis were without gas largely due to water being injected into the gas mains. Shut-off valves were locked in boxes which could be opened only by a special type of key. Certain employees had these keys prior to the strike and there was no way of telling if all of them had been turned in. Some members of fire departments throughout the city and county also had keys to these boxes. Instances were discovered by the police where water was injected into the gas mains. In one case, the hose from a water faucet was still connected and water was running into the gas pipe when the police arrived. Water in the gas system may shut off a customer's gas temporarily in travelling through the pipes to a low point in the system; and, after it has passed, the gas may come back on and escape through an open outlet, thereby creating a dangerous situation. Restoring gas service in any section requires the help of a great number of people. If the valve were merely turned on again, gas might escape through an open outlet and create an explosive or otherwise dangerous situation. It is necessary to shut off the gas at every meter, turn the gas back into the system, then turn on the gas for each customer and light the pilots. During the strike the company did not have sufficient employees to restore service once it had been turned off.

There were also reports of gas escaping into the sewer systems and causing gas fires which had to be extinguished. At one station, wires carrying electric current used for power were disconnected by the unscrewing and removing of three bolts. In trying to discover the trouble; the man

in charge of the plant came in contact with the wires and was severely burned. If the electric connection had not been restored in time, the seal of the gas tank would have been broken and the gas in the holder would have escaped. There was also evidence of tampering with the telemetric controls, which are instruments designed to keep the gas pressure at the proper amount in various sections of the distribution system. This created a danger in that gas lines might be ruptured by excessive pressure and flames on burning appliances might be dangerously increased. Arrangements were made with city and county police to protect the places where these telemetric controls were located, but the police could not furnish twenty-four-hour protection. The company also received numerous reports of escaping gas. Since natural gas has practically no odor, it was the practice of Laclede and other companies to add an odorant for safety purposes so that leaks could be detected more readily. This odorant, a liquid, was normally available to some of the employees. During the strike a bottle of this odorant was thrown through a window of the Forest Park office of the company, and other quantities of it were deposited at various places in the service area to give the impression that there were leaks where none existed.

When the strike began, the unions advertised in the newspapers that they were setting up crews to take care of emergency work and listed telephone numbers for the public to call. The defendants' evidence was that these crews responded to approximately 150 calls.

While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders.

Daniel C. Rogers, Chairman of the State Board of Mediation, told the union representatives that by their strike they had caused the service of a public utility to be discontinued and advised them that under the Public Service Commission Law, he felt that "they, as well as the company, were obliged to render continuous and safe service to the public." However, the employees did not resume their duties until the trial court rendered its judgment and decree.

"Employees of a public service corporation assume upon entering the service an implied obligation to perform their duties in such a manner as will enable the corporation to discharge its obligations to the public." 35 Am. Jur. 514. Master and Servant, Sec. 82. See also *Wilson* v. *New*, 243 U. S. 332, 353.

A utility in its relation to the state and the people it serves cannot be considered wholly separate and apart from its employees for without them the utility cannot function and render safe and adequate service.[3] The Public Service Commission law recognizes this and imposes penalties on employees as well as on utilities for their wrongful acts.

Section 386.570 imposes a penalty upon any corporation, person or public utility which violates or fails to comply with any provision of the constitution or any law of the state or any order of the commission. In like manner, § 386.580 makes it a misdemeanor for every officer, agent or employee of a public utility who violates or fails to comply with any provision of the constitution or of the laws

3. Section 10, Art. VII of the Labor Agreement of Local 56, dealing with work under adverse weather conditions, provides, *inter alia*, p. 43: "During inclement weather Leak Trucks shall do work of emergency nature only. (Emergency work includes turning on of service and answering of all leaks reported by the public.)" This contract, put in evidence by the defendants, expired June 30, 1956, but the portion quoted indicates a recognition of public obligation by the employees as well as by the utility.

of this state or any order of the commission.[4] This also has been the law of Missouri since 1913, presumably a valid enactment under the police powers of the state.

A local public utility occupies a favored position in that it is free from competition and has other privileges such as the right of eminent domain. These advantages inure to the benefit of the utility employees in the form of greater continuity and security of jobs and compensation. The demand for utility services is constant. Compensation of employees is an operating cost of the utility and the rate must be sufficient for the payment of such expenses. 73 C. J. S. 1040, Public Utilities, § 25, Note 15. The employees' duties are owed to the public though rendered through the utility. So long as the status of employee continues, the duty remains. Regulation by the state is necessary because utility service is not an individual, but a community problem. The state's representation of the public would be deficient if it did not have some right to control the conduct of employees through which the utility operates.

A strike or lockout which jeopardizes the public health, safety or interest is not a protected activity under the Labor Management Relations Act, 1947. Sec. 1(b) of the Act, 29 U. S. C. Sec. 141(b) provides: "Industrial strife which interferes with the normal flow of commerce and

4. "386.580. Employee of public utility guilty of misdemeanor, when.—Every officer, agent or employee of any corporation or public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any corporation, person or public utility of any provision of the constitution of this state or of this or any other law, or who fails to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids or abets any corporation, person or public utility in their or its failure to obey, observe and comply with any such order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, * * * is guilty of a misdemeanor * * *." Laws of Missouri 1913, p. 649.

with the full production of articles and commodities for commerce can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, *and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest.*" 61 Stat. 136. (Italics added.) This congressional declaration clearly indicates a purpose to subordinate such "acts and practices" to the public health, safety and interest. By use of the term "under law" state laws must have been intended as well as federal laws because historically and traditionally the state governments have been vested with the protection of the public health, safety and interest under their general police powers.

Consistent with the subordination of labor relation acts and practices which jeopardize the public interest is the 1947 amendment which makes it clear that Congress did not intend to remove any existing "limitations or qualifications" on the right to strike.[5] Sec. 13 as amended; 29 U. S. C. Sec. 163. The United States Supreme Court has recognized that violations of local laws enacted for the preservation of property rights and personal safety are

5. The National Labor Relations Board in *Marshall Car Wheel and Foundry Co.*, 107 N. L. R. B. 314, 315, recognized that there are employments in which the right to strike is subordinated by the nature of the employee's duties, stating: "In cases involving supervisory and plant-protection employees, the Board has recognized the validity of the general principle that the right of certain classes of employees to engage in concerted activity is limited by the duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as forseeably would result from their sudden cessation of work. We are of the opinion that this duty extends as well to ordinary rank-and-file employees whose work tasks are such as to involve responsibility for the property which might be damaged. Employees who strike in breach of such obligation engage in unprotected activity for which they may be discharged or subjected to other forms of discipline affecting their employment conditions."

without the protection of the federal Act. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, a "sit-down" strike; *International Union* v. *Wisconsin Board*, 336 U. S. 245, 258-265, 69 S. Ct. 516, 93 L. Ed. 651, intermittent work stoppages; *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 748-749, 62 S. Ct. 820, 86 L. Ed. 1154 and *United Automobile Workers* v. *Wisconsin Board*, 351 U. S. 266, 274-275, 76 S. Ct. 794, 100 L. Ed. 1162, mass picketing and violence against persons and property. This is consistent with Congressional intent as expressed in other Acts where the exercise of the police power by the local government is particularly suitable. For instance, the Natural Gas Act, 52 Stat. 821, expressly provides that it shall not apply to "local distribution of natural gas or to the facilities used for such distribution." 15 U. S. C. Sec. 717(b). This Act was passed June 21, 1938, three years after the original National Labor Relations Act. Congress would hardly expect the state to regulate and control the local distribution of natural gas and the facilities therefor without the governmental powers necessary to make its laws and orders with respect thereto effective.

There are also federal laws which have the effect of limiting and qualifying the right to strike. In *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31, 62 S. Ct. 886, 86 L. Ed. 1246, seamen of a ship whose home port was Philadelphia struck and refused to obey orders while in port at Houston. The discharge of the seamen was held to be justified because the strike was in violation of the federal mutiny laws. The national emergency provisions of the labor relations Act, 29 U. S. C., Sec. 176-180, have limited and qualified the right to strike and there is no question but that Congress could make unlawful and prohibit entirely strikes that jeopardize the national health, safety and interest. *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 588.

An absence of violence traceable to the defendants does not render this a "peaceful" strike. In *Senn* v. *Tile Layers Union*, 301 U. S. 468, 479, 57 S. Ct. 857, 81 L. Ed. 1229, the court stated: "The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence but absence of any unlawful act. It precludes the intimidation of customers. It precludes any form of physical obstruction or interference with the plaintiff's business." A strike such as this operates chiefly against the public. The utility loses no business because there is nowhere for the patrons to turn for service. The inevitable result of such a strike is to coerce and intimidate the customers contrary to laws made for their protection.

Both the utility and its employees failed in their duty to furnish the public with a continuous, safe and adequate supply of gas. This is in violation of the laws of Missouri and the orders of the Public Service Commission implicit in the approval of the corporate charter and the grant of the utility's franchise and permit. Such violation is made a misdemeanor by our statutes. Secs. 386.570 and 386.580. Further, our conspiracy statute, Sec. 556.120, provides: "If two or more persons shall agree, conspire, combine or confederate: First, to commit any offense; * * * or, sixth, to commit any act injurious to the public health or public morals, * * * shall be deemed guilty of a misdemeanor." The failure of the parties to agree upon a contract and the resultant strike does not excuse the violations. Such a strike if long continued would likely result in proceedings to suspend or revoke the utility's franchise or permit for violation of obligations provided by law.

The appellants contend this case is ruled by *Amalgamated Association* v. *Wisconsin Board*, 343 U. S. 383, but we do not think so. The statutes involved in the two cases are substantially different. One of the main differences is that the Wisconsin Act provided for compulsory arbitration

while the King-Thompson Act does not. The utility employees are not required to accept mediation services or the findings of the hearing panel under the Missouri Act. Voluntary agreements through collective bargaining are not abolished. The only limitation upon an employees' strike or a company's lockout is if the public interest is endangered. The Wisconsin Act provided for a ban on strikes and compulsory arbitration when an impasse was reached in negotiations. The Missouri Act, on the other hand, does not render a strike unlawful until the governor has determined that the public health, safety and interest is threatened and has seized the property "for the use and operation by the state of Missouri in the public interest." Section 295.180. The King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities as the Wisconsin Act appeared to be. Emergency legislation is justified under the police powers. 16 C. J. S. 972-973, Constitutional Law § 198. The purpose of seizure is the preservation of community life as encouraged and fostered by the state. The purpose of the Act is to protect its citizens against disaster. As previously indicated, we deem the strike in the circumstances in this case to be unlawful and, therefore, not a peaceful strike as the term is used in *Amalgamated Association* v. *Wisconsin Board*.

The King Thompson Act operates in the field of police powers and deals specifically with the relation between a utility including its employees, on the one hand, and the "patrons" and citizens of the community, on the other. The Taft-Hartley Act deals with interstate commerce and more particularly with the relations between employers and their employees. The dominant purposes of the two Acts are different; if there is any overlapping, it is incidental and not substantial. Only undue and discriminatory burdens on interstate commerce are forbidden. *Breard* v.

Alexandria, 341 U. S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, 35 A. L. R. 2d 335, rehearing denied 342 U. S. 843, 72 S. Ct. 21, 96 L. Ed. 637.

The exercise of the state police power is superseded only where repugnance or conflict with a federal act is so direct and positive that the two acts cannot be reconciled. *United Workers* v. *Laburnum Construction Co.*, 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025; *Breard* v. *Alexandria*, *supra*. As stated by Mr. Chief Justice Hughes in *Kelly* v. *Washington*, 302 U. S. 1, 10, 58 S. Ct. 87: "The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"

A growing number of decisions of the United States Supreme Court indicates a considerable area where state activity and regulation is permitted. Among the more recent cases are: *C. A. W.* v. *Russell*, 356 U. S. , 78 S. Ct. 932, 2 L. Ed. 2d 1030, and *Machinists Ass'n* v. *Gonzales*, 356 U. S. , 78 S. Ct. 923, 2 L. Ed. 2d 1018. Russell recovered damages for loss of earnings and malicious interference with his employment suffered when pickets prevented his entering his place of work. Gonzales, wrongfully expelled from his union, obtained a decree of restoration to membership and a money judgment. In each case a state court judgment was affirmed although the matters appeared to be partially within the jurisdiction of the National Labor Relations Board.[6] Police powers of the

6. See also: *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 748-751; *Algoma Plywood Co.* v. *Wisconsin Board*, 336 U. S. 301; *International Union* v. *Wisconsin Board*, 336 U. S. 245; *Garner* v. *Teamsters Union*, 346 U. S. 485, 488; *United Construction Workers* v. *Laburnum Construction Co.*, 347 U. S. 656; *Adams Dairy* v. *Burke, Mo.*, 293 S. W. 2d 281, cert. den. 352 U. S. 969; *United Auto Workers* v. *Wisconsin Board & Kohler Co.*, 351 U. S. 266, 274; *Amalgamated Clothing Workers* v. *Richmond (sic) Bros.*, 348 U. S. 511; *Gibaney* v. *Empire Storage and Ice Company*, 357 Mo. 671, 210 S. W. 2d 55, affirmed 336 U. S. 490.

state and their exercise as opposed to federal laws were involved in *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 749, wherein the Court stated that it would "not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several states" in regard to "such traditionally local matters as public safety and order and the use of streets and highways." The King-Thompson Act is predominately (*sic*) an extension of the regulation and control of public utilities in the public interest and as such is the exercise of "historical powers" of the state. So construed Sections 295.180 and 295.200(1) present no direct and irreconcilable conflict with the federal Act even without the aid of the subordination provisions of 29 U. S. C. Sec. 141. The Sections are therefore not unconstitutional.

Section 295.200(6) authorizes the courts in Missouri "to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder." The state has always been deemed to have the power to compel a public utility company to furnish service to the inhabitants of the territory it has undertaken to serve. *State ex rel. Ozark Power & Water Co.* v. *Public Service Commission of Missouri*, 287 Mo. 522, 229 S. W. 782, 785(2); *New York & Queens Gas Co.* v. *McCall*, 245 U. S. 345, 38 S. Ct. 122, 62 L. Ed. 337; 73 C. J. S. 1002, Public Utilities § 8a.

43 Am. Jur. 595, Public Utilities and Service, § 33 states: "A common use of the remedy of injunction against public utilities is to compel them to perform their obligations to the public, as, for example, the obligation to furnish service or supply a commodity." Among the cases cited in support of this statement is *North Carolina Public Service Co.* v. *Southern Power Co.*, C. C. A. 4, 282 F. 837, 33 A. L. R. 626, writ of certiorari dismissed 263 U. S. 508, 44 S. Ct. 164, 68 L. Ed. 413. See also 15 A. L. R. 2d 257-264.

Our general statute, Section 386.360, expressly providing for such relief in the public interest states that: "Whenever the commission shall be of the opinion that a * * * gas corporation, * * * is failing or omitting or about to fail or omit to do anything required of it by law or by order or decisions of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order or decision of the commission, it shall direct the general counsel to the commission to commence an action * * * for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions."

Section 295.210 is a savings clause similar to that contained in the Labor Management Relations Act, 29 U. S. C. Section 143. It provides: "No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent." It follows that § 295.200(6) is not in conflict with the federal Act and is, therefore, not unconstitutional.

The sections which we have considered are severable from and may stand independently of the remainder of the Act. Although the defendants argue strenuously to the contrary, no case is made in this record for determination of the constitutionality of § 295.090, pertaining to a written labor agreement of a minimum duration and § 295.200, subparagraphs 2, 3, 4 and 5, relating to monetary penalties and loss of seniority. We, therefore, refrain from expressing any opinion with reference thereto. *Wilson* v. *New*, 243 U. S. 332, 354; *Lolordo* v. *Lacy*, 337 Mo. 1097, 88 S. W. 2d 353, 360(19); *Beets* v. *Tyler*, 365

Mo. 895, 290 S. W. 2d 76, 82(16); *Logsdon* v. *Duncan*, Mo., 293 S. W. 2d 944, 946(1); *State ex rel. State Board of Mediation* v. *Pigg*, *supra*.

The appellants next charge that the King-Thompson Act is in violation of Art. I, § 29, of the Constitution of Missouri because the right to bargain collectively includes the right to strike. Section 29 provides: "That employees shall have the right to organize and to bargain collectively through representatives of their own choosing." This is to the same effect as § 7 of the amended National Labor Relations Act, 29 U. S. C. § 157, yet limitations on the right to strike are recognized under the federal law. The King-Thompson Act does not abolish the right of utility employees to strike, but only subordinates the right to the public interest. This is an exercise of the police power of the State which § 29 does not impair. See *City of Springfield* v. *Clouse*, 356 Mo. 1239, 206 S. W. 2d 539, 542, 544, and *Glidewell* v. *Hughey*, Mo., 314 S. W. 2d 749. We find no valid distinction which would prefer this over other constitutional guarantees of personal liberties which have been held to be subordinate to the police powers. *Breard* v. *Alexandria*, 341 U. S. 622, 642; *Prince* v. *Massachusetts*, 321 U. S. 158, 166-167.

Next appellants contend that Sec. 295.180, providing for seizure, is an unlawful delegation of legislative powers violative of Art. II, Sec. 1, of the Constitution of Missouri, 1945, in that it does not provide sufficient standards and guides for "carrying out the seizure provisions of the Act." The alleged deficiencies of the Act in this regard are not pointed out more specifically. Sec. 295.180 sets out in considerable detail the circumstances under which the governor may take possession of utility property. Sec. 295.200(1) makes a strike or concerted refusal to work thereafter unlawful and Sec. 295.200(6) vests the courts with jurisdiction to enforce the Act or any of

the governor's rules or regulations. We do not think the Act "fails to prescribe with reasonable clarity the limits of the power delegated," 42 Am. Jur. 341, Public Administrative Law, Sec. 44, or that it fails to state the purpose "with sufficient exactness to enable those affected to understand these limits." *U. S. v. Rock Royal Co-op, Inc.*, 307 U. S. 533. When the legislature has described the purpose or rule, matters of detail in administering the act may be left to the executive even though the exercise of discretion is involved. *Spitcaufsky v. Hatten*, 353 Mo. 94, 182 S. W. 2d 86, 109(60); *State ex rel. Crain v. Moore*, 339 Mo. 492, 99 S. W. 2d 17, 21(6). It is not necessary that statutes prescribe a rule of action where they deal with situations which require the vesting of discretion in a public officer such as where the discretion relates to a police regulation and is necessary to protect the public health, safety and welfare. *Ex parte Williams*, 345 Mo. 1121, 139 S. W. 2d 485, 490(10); *Kalbfell v. City of St. Louis*, 357 Mo. 986, 211 S. W. 2d 911, 915(3). See also 16 C. J. S. 575, Constitutional Law, Sec. 138 and 42 Am. Jur. 337, Public Administrative Law, Sec. 43. The assignment is denied.

Next the appellants attack Sec. 295.200(1) on the ground that it violates Secs. 2, 8, 9 and 10 of the Constitution of Missouri, and the First, Thirteenth and Fourteenth Amendments of the Constitution of the United States. Sec. 295.200(1) provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state."

First the appellants claim that the statute is so vague and

indefinite that it violates rights of free speech, peaceable assembly, due process and other constitutional guarantees. They say the statutory language is susceptible of different meanings and cite cases involving criminal statutes, which generally hold that due process requires the crime and its elements to be so clearly expressed that an ordinary person may know the lawful course. This is not a criminal statute, but in any event, we do not think the statute is fatally vague or indefinite. As stated in *United States* v. *Petrillo*, 332 U. S. 1, 8, 67 S. Ct. 1538, 91 L. Ed. 1877, the constitution does not require impossible standards and: "The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more."

Further the defendants contend that Sec. 295.200(1) is an "outright denial of the right of free speech" guaranteed in the First and Fourteenth Amendments to the United States Constitution and Sec. 8, Art. I of the Missouri Constitution and that the statute denies their rights to peaceably assemble for their common good, pursuant to Sec. 9, Art. I of the Constitution of Missouri. In support of these contentions, the defendants cite *Thornhill* v. *Alabama*, 310 U. S. 88, holding invalid a statute forbidding picketing; *Thomas* v. *Collins*, 323 U. S. 516, involving a state statute requiring labor organizers to register before soliciting union memberships; *Marx & Haas Jeans Clothing Co.* v. *Watson*, 168 Mo. 133, 67 S. W. 391, seeking to enjoin distribution of a circular regarding the plaintiff's labor practices; and *Ex parte Hunn*, 357 Mo. 256, 207 S. W. 2d 468, holding invalid the Madison Act, a state statute.

The cases cited by the defendants recognize that these constitutionally guaranteed rights are subject to regulation in the public interest. The circumstances under which

this may be done and to what extent is well-stated in an opinion by the late Chief Justice Vanderbilt of the Supreme Court of New Jersey in a case involving an attack upon a similar New Jersey statute, *State* v. *Traffic Telephone Workers Federation*, 2 N. J. 335, 66 A. 2d 616, 622, as follows: "It must be recognized that the statutes in question inevitably impinge upon the unfettered exercise of some of the constitutional guarantees asserted by the defendant union, but only out of deference, however, to the paramount significance of other public rights. That, as we have shown, is not an uncommon occurrence in the field of constitutional law. The immediate question is whether or not such restrictions on the absolute application of any constitutional guarantees come within the area delimited in the decisions of the Supreme Court of the United States as the ultimate arbiter of the meaning of the Federal Constitution as justifying such restrictions. The tests that the United States Supreme Court has laid down in this field, and particularly where freedom of speech, freedom of the press, and freedom of assembly are involved, are that such restraints are justifiable only 'to prevent grave and immediate danger to interests which the state may lawfully protect' and any such restraints must be reasonable."

Defendants make no showing that the statute interferes with their right of assemblage or freedom of speech as such. Nor does it prohibit picketing except as it may be an adjunct of the strike or concerted refusal to work. Moreover, picketing is not an unqualified right, but is also subject to the police power. See *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 503-504, 69 S. Ct. 684, 93 L. Ed. 834; *Building Service Employees Union* v. *Gazzam*, 339 U. S. 532, 536; and *International Brotherhood of Teamsters* v. *Hanke*, 339 U. S. 470, 474. *Teamsters Union* v. *Vogt, Inc.*, 354 U. S. 284, discusses the

more recent cases including *Thornhill* and concludes, 354 U. S. 293: "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." This statute is part of emergency legislation dealing with clear and present threats to the public health and welfare. It is a reasonable regulation and not unconstitutional on the grounds stated.

The defendants further say that § 295.200(1) denies utility employees and their representatives equal rights and opportunities under law, Art. I, § 2 of the Missouri Constitution, and equal protection of the laws under the Fourteenth Amendment. It is within the legislative authority to classify and deal with businesses affected with the public interest. *Munn* v. *Illinois*, 94 U. S. 113. The classification of utility employees and union representatives cannot be said to be lacking any adequate or reasonable basis. *Whitney* v. *California*, 274 U. S. 357, 370; *Wilson* v. *New*, 243 U. S. 332, 349. It is unnecessary for the state legislature to cover the whole field of possible abuses. *Hughes* v. *Super. Court of California*, 339 U. S. 460, 468.

Finally, the defendants say that § 295.200(1) imposes a form of compulsory service or involuntary servitude in violation of Amendment Thirteen of the Constitution of the United States. Section 295.210 is a saving provision similar to the one in the Labor Management Relations Act, 1947, 29 U. S. C. A., § 143. It provides in substance that no employee shall be required to render labor or service without his consent and that the Act shall not be construed so as to make the quitting of his job by an individual employee an illegal act. The defendants' interpretation of the § 295.200(1) is strained and unwar

ranted. It loses sight of the fact that the section under attack is directed against a strike or concerted refusal to work and has nothing to do with one or more quitting work of their own volition. The section does not have the purpose or effect of imposing involuntary servitude in violation of the Thirteenth Amendment. *Auto Workers v. Wisconsin Board*, 336 U. S. 245, 251.

In its amended judgment and decree entered August 17, 1956, the trial court found and declared that "Chapter 295, R. S. Mo., 1949, and all portions thereof are valid, enforceable, constitutional, and not in violation or derogation of the Constitution of the United States or of the Constitution of the State of Missouri." We have limited our inquiry and determination to §§ 295.010-295.080, 295.120-295.170, 295.180, 295.200(1) and 295.200(6). With respect to these sections, we have considered and denied all of defendants' claims of unconstitutionality.

As so limited and modified the judgment is affirmed.

CLEM F. STOECKMAN,
Judge.

APPENDIX E.

THE KING-THOMPSON ACT, R. S. MO. 1949, CHAPTER 295.

295.010. *Labor relations affecting public utilities—state policy.*—It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest.

295.020. *Definitions.*—1. The term "public utility" shall include any person engaged in the business of producing, distributing, selling or otherwise furnishing electric light or power, heat, gas, steam, water, sewer service, transportation excepting railroads, communication, or any one or more of them to the people of Missouri.

2. The term "person" means any individual, firm, copartnership, corporation, municipal corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

3. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a utility or group of utilities or by its or their employees to act or do for them.

4. The term "collective bargaining" shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions.

5. The term "labor dispute" shall involve any controversy between employer and employees as to hours, wages, and working conditions. The fact that employees have amicable relations with their employers shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes.

6. The term "employee" shall refer to anyone in the service of another, actually engaged in or connected with the operation of any public utility throughout the state.

7. The term "board" shall mean the state board of mediation.

295.030. *Governor to appoint state board of mediation —members—qualifications—terms—vacancy.*—1. Within thirty days after the effective date of this chapter the governor, by and with the advice and consent of the senate, shall appoint five competent persons to serve as a state board of mediation; two of whom shall be employers of labor, or selected from some association representing employers of labor, and two of whom shall be employees holding membership in some bona fide trade or labor union; the fifth shall be some person who is neither an employee nor an employer of labor and who shall be chairman of said state board of mediation.

2. Two members of said board shall be appointed for one year, two for two years, and one for three years, and all appointments thereafter shall be for three years or until their respective successors are appointed in the manner herein provided.

3. If a vacancy occurs in said Board by death or otherwise, at any time, the governor shall appoint some competent person having the same qualifications as his predecessor to fill the unexpired term.

295.040. *Oath of members—main office—meetings.*—Each member of said board shall, before entering upon the duties of his office, take and subscribe an oath to support the Constitution of the United States and this state and to demean himself faithfully in his office. The main office of the state board of mediation shall be in Jefferson City, but the board may hold meetings at any time or any place in the state whenever the same shall become necessary, and three members of the board shall constitute a quorum for the transaction of business.

295.050. *Duties of chairman.*—The chairman of the board shall devote his full time to his duties and shall have charge of the office of the board. He shall keep all records of the proceedings of the board, and shall supervise the work of the employees of the board, and shall have such other powers and duties as may be conferred, or imposed upon him by the board.

295.060. *Compensation and expenses of board members.*—The chairman of the board shall receive a salary of five thousand dollars per annum, payable monthly; each of the other members of the state board of mediation shall receive fifteen dollars per day for the time spent in the performance of their duties. All members shall receive traveling and other expenses incurred in the performance of their duties.

295.070. *Powers and duties of board.*—1. The state board of mediation shall have power to employ and fix the compensation of conciliators and other assistants and to delegate to such assistants such powers as may be necessary to carry out its duties under this chapter. The board

shall by regulation prescribe the methods of procedure before it.

2. The board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter under investigation by the board. In cases of refusal to obey a subpoena issued by the board the circuit court of Cole county or of any county where the person refusing to obey such subpoena may be found, on application by the board, shall have power to issue an order requiring such person to appear before the board and to testify and produce evidence ordered touching the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof.

295.080. *Labor disputes—action by board.*—1. Upon receipt of notice of any labor dispute between parties subject to this chapter, the board shall require such parties to keep it advised as to the progress of negotiations therein.

2. Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.

3. It shall be the duty of all parties to a labor dispute to respond to the summons of the board for joint or several conferences with it or with its representatives and to continue in such conference until excused by the board or its representative.

295.090. *Labor agreements — renewal.*— All collective bargaining labor agreements hereafter entered into be

tween the management of a utility and its employees or any craft or class of employees shall be reduced to writing and continue for a period of not less than one year from the date of the expiration of the previous agreement entered into between the management of the utility and its employees or if there has been no such previous agreement then for a period of not less than one year from the date of the actual execution of the agreement. Such agreement shall be presumed to continue in force and effect from year to year after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and shall also file a copy of such demands with the state board of mediation, at least sixty days before the original termination date of (*sic*) sixty days before the end of any yearly renewal period, or sixty days before any termination date desired thereafter.

295.100. *Changes in labor agreement — notice.*— 1. In the case of all existing labor contracts, agreements or understandings which do not provide for at least a sixty-day notice of desired changes and which contracts, agreements or understandings terminate after seventy days following the effecive date of this chapter, the parties thereto shall nevertheless inform, in writing, the other party or parties of any specific changes desired to be made in said contract, agreement or understanding and file a copy of such desired changes with the state board of mediation at least sixty days before the date fixed for the termination of said contract, agreement or understanding.

2. In the case of labor contracts, agreements or understandings terminating within seventy days after this chapter shall become effective, the parties thereto shall forthwith, or not later than ten days after the effective date of this chapter, inform the other party, in writing, of the specific changes desired to be made in said con-

tract, agreement or understanding and promptly file a copy of such demands with the state board of mediation.

295.110. *Changes in employment terms in absence of labor contract.*—Whenever, after the effective date of this chapter, a situation exists in any utility whereby employees are rendering services under terms and conditions which were not at the time this chapter becomes effective and which have not heretofore been the subject of the contract, and said employees desire to effectuate a change in the terms of employment or a utility desires to effectuate a change in said terms of employment then and in that event, it shall be the duty of the party desiring such change, not less than sixty days prior to the desired effective date thereof, to inform the other party in writing of the specific changes so desired in the manner in which they are desired, either by written contract or otherwise and to file a copy of such terms with the state board of mediation.

295.120. *Public hearing panel — members — powers — hearings.*—1. In the event that management of a utility and the representatives for collective bargaining purposes of any craft or group of employees of such utility shall not have reached and executed a final agreement in writing as to all conditions of employment affecting such employees on or before the termination date of any existing contract, agreement or understanding or any renewal thereof, or unless the parties shall have, before said date, agreed to submit any and all disputes between them to arbitation, the management of such utility and the representatives of such employees shall, within five days after such termination date, each designate, in writing, a person as a public hearing panel member and file such designation with the state board of mediation; the two persons so designated shall choose a third disinterested and impartial person and these three shall compose and act as a panel.

2. The panel shall promptly proceed and within fifteen days following their designation hold and complete public hearings on the specific changes so requested, to the contract, agreement or understanding. Said period of fifteen days may be extended by the mutual written consent of the parties. The panel shall give to each party full notice and opportunity to be heard, but the failure of either party to appear before the panel at the time and place fixed by it shall not deprive the panel of jurisdiction to proceed to a hearing and to make report thereon as herein provided.

295.130. *Appearance in person or by counsel—notice of hearing.*—Parties may be heard either in person or by counsel as they may elect, and the panel shall give due notice of all hearings to the employee or employees or their representatives and the public utility or utilities involved in the labor dispute.

295.140. *Selection of party representatives.*—Representatives for the purposes of this chapter shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other. Representatives of employees for the purpose of this chapter need not be persons in the employ of the utility.

295.150. *Report of hearing to governor:*—Within five days after closing such hearings the panel shall file with the governor, in writing, a report setting forth a statement of the controversy, a resumé of the evidence submitted to it and its recommendations based thereon.

295.160. *Appointment of representatives by board when not designated by parties.*—1. In the event either management of the utility involved or the representatives of the employees for collective bargaining purposes shall fail or neglect to designate, as herein provided, such a person to represent it upon the panel or the two so designated shall fail to agree upon the third member of the panel, within

ten days after the date fixed for the termination of such contract, agreement or understanding or upon failure to file such designations or any of them with the state board of mediation within said ten-day period, the state board of mediation shall appoint such person or persons, selecting in each case a person qualified by previous experience or employment to represent employers, employees or the public as the case may require.

2. Should both management and the representatives of the employees fail or neglect to designate representatives upon said panel within the time herein required, then the state board of mediation shall appoint a panel of three persons, to be selected as follows: one to represent management of the utility, giving the management forty-eight hours to select its preference from a list of five persons submitted by the board to the management before designating such person; one to represent the employees involved, giving their representative forty-eight hours to select their preference from a list of five persons submitted by the board to such representative, before designating such person; and one to act as the impartial third person. Failure on the part of either party to make such selection shall not prevent the board from appointing the members of the panel from the lists submitted.

295.170. *Proceedings not to supersede voluntary arbitration.*—Compulsory arbitration, as provided in this chapter, shall not be effective in disputes where voluntary arbitration is a part of the contract between the disputing parties. In the event that through the voluntary arbitration disputing parties cannot agree, the state board of mediation shall then enforce the compulsory arbitration as provided.

295.180. *Utility strike—power of governor.*—1. Should either the utility or its employees refuse to accept and abide by the recommendations made pursuant to the provi-

sions of this chapter and as a result thereof the effective operation of a public utility be threatened or interrupted, or should either party in a labor dispute between a utility and its employees, after having given sixty days' notice thereof, or failing to give such notice, engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, or in the event that neither side has given notice to the other of an intention to seek a change in working conditions, and there occurs a lockout, strike or work stoppage which, in the opinion of the governor, threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare, then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the public interest.

2. Such power and authority may be exercised by the governor through such department or agency of the government as he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, and that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility; provided, that whenever such public utility, its plant, equipment or facility has been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage or slowdown, or other cause, such utility, plant, equipment or facility shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute, and it shall thereupon be the duty of such utility to continue the operation of the plant, facility, or equipment in accord-

ance with its franchise and certificate of public convenience and necessity.

295.190. *Governor to prescribe rules and regulations.*— The governor is authorized to prescribe the necessary rules and regulations to carry out the provisions of this chapter.

295.200. *Unlawful acts—penalties—enforcement of provisions.*—1. It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state.

2. It shall be unlawful for any public utility to employ any person or employee who has violated paragraph 1 of this section except that such person or employee may be employed only as a new employee.

3. Any labor organization or labor union which violates paragraph 1 of this section shall forfeit and pay to the state of Missouri for the use of the public school fund of the state, the sum of ten thousand dollars for each day any work stoppage resulting from any strike which it has called, incited, or supported, continues, to be recovered by civil action in the name of the state and against the labor organization or labor union in its commonly used name.

4. Any officer of any labor organization or labor union representing employees of public utilities who participates in calling, inciting or supporting any strike in violation of paragraph 1 of this section shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of one thousand dollars to be recovered by civil action in the name of the state and against such officer.

5. Any public utility that engages in a lockout which

brings about a work stoppage shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of ten thousand dollars for each day of work stoppage caused by such lockout, said amount to be recovered by civil action in the name of the state and against the public utility; provided further, that if, upon any investigation, supported by competent evidence, by the state board of mediation, it shall appear that any public utility has refused to bargain collectively in good faith with its employees over the terms and conditions of employment, said state board of mediation shall certify such record and proceedings to the public service commission, and, upon consideration of the facts in such record and proceedings the public service commission shall find that the evidence justifies such action, it may revoke the certificate of convenience and necessity of such public utility or impose such other conditions upon such public utility as may be provided by law. Any such action by said public service commission shall be subject to review in the courts of this state in the same manner as other orders or decisions of said commission.

6. The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder.

295.210. *Meaning of law.*—No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

APPENDIX F.

THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively, safe-

guards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in

a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.